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1	UNITED STATES DISTRICT COURT			
2	SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION			
3	KEVIN CONNORS . C.A. NO . HOUSTON	. H-17-1512 . TEXAS		
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5	DR. EDGAR HULIPAS, et al . 4:07 P.M	M. to 4:24 P.M.		
6				
7	TRANSCRIPT OF MOTION HEARING BEFORE THE HONORABLE VANESSA D. GILMORE UNITED STATES DISTRICT JUDGE			
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9				
10				
11 12	Law Off:	DANIEL FRIEDMAN ice of Jerold D.		
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14	Houston	Texas 77071		
15				
16	FOR DEFENDANTS DR. EDGAR HULIPAS,	. WARREN		
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20	Austin,	Texas 78711		
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22	2			
23	3			
24		canhy transcript		
25		Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.		

1	APPE	ARANCES CONTINUED
2	FOR DEFENDANT TDCJ:	BRUCE R. GARCIA Office of the Attorney General
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8		Room 8004 Houston, Texas 77002
9 10		713-250-5208
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PROCEEDINGS 1 2 THE COURT: Connors versus Texas Department of Criminal Justice. 3 (Judge conferring with case manager) 4 5 THE COURT: All right. Connors versus TDCJ and UTMB. 16:07:16 Who's here for the plaintiff, please? 6 7 MR. FRIEDMAN: Jerold Friedman for Mr. Connors, the plaintiff. 8 THE COURT: Mr. Friedman. 9 And who's here for TDCJ, I guess? 10 16:07:35 MR. GARCIA: Bruce Garcia for the Texas Department of 11 Criminal Justice. 12 THE COURT: Okay. Mr. Garcia. 13 And who's here for the -- UT and I quess the 14 16:07:53 15 doctors? 16 MS. WARREN: Yes, Your Honor. Kelsey Warren for Dr. Hulipas, Terry Speer, and the University of Texas Medical 17 Branch. 18 THE COURT: Okay. So I know this was filed like it 19 was an emergency kind of a deal, but did y'all have a chance --20 16:08:11 did your -- Mr. Friedman, did you and Mr. Garcia and 21 Ms. Warren, did y'all have some conversation about what you 22 needed and what you wanted and whether or not there was any 23 24 potential resolution to your problems? MR. FRIEDMAN: We've had off-and-on conversation over 16:08:27

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the last several weeks --
          1
16:08:29
          2
                      THE COURT: Pardon me?
                      MR. FRIEDMAN: We've had off-and-on conversation over
          3
             the last several weeks --
          4
          5
                      THE COURT: Uh-huh.
16:08:35
          6
                      MR. FRIEDMAN: -- and we're presently at an impasse.
          7
                      THE COURT: Okay. When was the last time you spoke to
          8
             Mr. Connors?
                                     Approximately 10 to 12 days ago.
          9
                      MR. FRIEDMAN:
                      THE COURT: Okay. So I guess I'm a little bit
         10
16:08:45
             confused, because -- well, I quess because of two things.
         11
             does he have an appointment already coming up with UTMB, with a
         12
             gastroenterologist?
         13
                      MR. FRIEDMAN: Not that I'm aware of.
         14
                                                             There is an
16:09:01
         15
             appointment scheduled for now in October of 2019.
                                                                 That's the
             last I knew, which is still two months out.
         16
         17
                      THE COURT: Okay. But that was my question. Does he
         18
             have an appointment scheduled coming up?
         19
                      MR. FRIEDMAN: I don't know that that's with the
             gastroenter -- I don't know that it's with the specialist he
         20
16:09:13
         21
             needs. I just know he has --
         22
                      THE COURT: Isn't that with the gastro?
         23
                      MS. WARREN: Yes, Your Honor. It's with the
         24
             gastroenterology specialist, Hospital Galveston.
                      THE COURT: Okay. So, he does have an appointment
16:09:20
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coming up --
          1
16:09:22
          2
                      MR. FRIEDMAN: I know he has an appointment --
          3
                      THE COURT: -- with a gastroenterologist at UTMB in
             October?
          4
          5
                      MR. FRIEDMAN: I would trust the defendants'
16:09:27
          6
             representation.
          7
                      THE COURT: So you did not know that before today?
          8
                      MR. FRIEDMAN: I knew there was an appointment.
             didn't recall that it was for a gastroenterology specialist.
          9
                      THE COURT: But isn't that what you were asking for as
         10
16:09:35
             part of your injunctive relief, that you wanted an appointment
         11
             with the qastro?
         12
                      MR. FRIEDMAN: Yeah. He has a variety of medical
         13
             conditions. I wasn't sure what he was going to be seen on that
         14
16:09:46
         15
             date for. I may just have overlooked it. I just don't --
                      THE COURT: So that part of your request is
         16
         17
             resolved -- is moot then?
                      MR. FRIEDMAN: It is not moot, Your Honor, because
         18
             he's having blood coming out of his anus right now. He's
         19
             having puss coming out of his anus right now. He needs to see
         20
16:09:57
             a doctor much more quickly than two months.
         21
                      THE COURT: Okay. So did he ask to see a doctor and
         22
             he was denied?
         23
         24
                      MR. FRIEDMAN: Yes. He asked on -- July 19th was the
             last time he asked, and he was told he would be seen by a GI
         25
16:10:08
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specialist within 30 days, on an expedited basis, which would 1 16:10:12 be --2 THE COURT: No, I know, but this is not a GI issue. 3 This is an emergency issue. Did he ask to see a doctor on an 4 5 emergency basis and he was denied an opportunity to see a 16:10:20 6 doctor on an emergency basis? 7 I do not --MR. FRIEDMAN: 8 THE COURT: That's what I'm trying to figure out. 9 has a gastro appointment coming up. So, we've got that. that is one of the issues I wanted to get resolved. But it 16:10:31 10 sounds like what you're saying is, it's not a gastro issue. 11 12 It's not an immediate gastro issue. It's an immediate emergency issue. 13 Right. 14 MR. FRIEDMAN: 16:10:41 15 THE COURT: So did he ask for -- to be seen by an emergency medical personnel, nurse practitioner or nurse or 16 17 doctor and he was denied an opportunity for emergency medical 18 care? 19 July 19 he asked for an emergency MR. FRIEDMAN: Yes. and he was told he would be put on an expedited list and that 20 16:10:53 21 expedited list came and went. THE COURT: What does an expedited list mean? I don't 22 23 know what that means. MR. FRIEDMAN: He was told he would be seen within 30 24 days, which would be August 18 -- or August 19, and he was seen 25 16:11:05

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by a nurse on August 19th.
          1
16:11:08
          2
                      THE COURT: And he was seen by a nurse?
                      MR. FRIEDMAN: By a nurse.
          3
                      MS. WARREN: A nurse practitioner, Your Honor.
          4
          5
                      THE COURT: Okay.
16:11:13
          6
                      MR. FRIEDMAN: Not by a GI specialist.
                      THE COURT: Oh, stop. Every time I ask a question --
          7
          8
                      MR. FRIEDMAN:
                                     Sorry.
                      THE COURT: -- you just -- you refuse to answer the
          9
             question that I'm asking. I'm finished with the GI specialist.
         10
16:11:19
             We're done. We've got an appointment. That's coming up.
         11
                           Now we're just dealing with the emergency
         12
             situation.
         13
                                     I understand.
         14
                      MR. FRIEDMAN:
                      THE COURT: He asked to see somebody on an emergency
16:11:29
         15
             basis and was he seen by somebody within 30 days or not?
         16
         17
                      MR. FRIEDMAN: Not within 30 days. 31 days.
         18
                      THE COURT: Okay. So he was seen by somebody on an
             emergency basis on August the 19th?
         19
         20
                      MR. FRIEDMAN:
                                     Correct.
16:11:40
         21
                      THE COURT: Okay. So he was seen by somebody on an
             emergency basis on August the 19th and they did whatever they
         22
             did and then now he still has an upcoming appointment with a
         23
         24
             gastro guy in October?
                      MR. FRIEDMAN:
16:11:50
                                     Correct.
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THE COURT: So what additional medical relief, either emergency or gastro, do we still need? It sounds like those two issues have been addressed, at least the immediacy issue with a nurse practitioner and then the gastro issue with the upcoming appointment. What else is it that has not happened?

MR. FRIEDMAN: My position -- our position is that the nurse practitioner is not an adequate specialist.

THE COURT: Okay. You don't get to pick what kind of

emergency person you get to see. A nurse practitioner is a medical professional. So that -- I don't get to choose that. And you don't get to choose that. He got seen on an emergency basis by somebody. What else is it that you're still looking to have happen in terms of seeking medical care at this point?

MR. FRIEDMAN: So then we want the medical prescriptive diet, low-residue diet to be ordered by the Court.

THE COURT: Okay. But here's the only problem with that part. I can't do an order that tells what a medical procedure is going to happen. Only a doctor can do that. All I can say is he needs to be seen by a doctor. He needs to be seen by a medical professional either on an emergency basis, which in this case was the nurse practitioner, or a specialist, which in this case because of the nature of his illnesses are gastro related and he's got an appointment coming up. But I can't tell the doctor what prescription to give. All I can say is he needs to be seen and you need to do an order ordering

TDCJ what you want them to do. 1 16:13:13 2 3 4 16:13:31 5 6 7 8 10 16:13:52 11 12 13 14 16:14:10 15 prescription. 16 17 happened a long time ago. 18 19 20 16:14:21 21 22 his low-residue diet? 23 24 MS. WARREN: Your Honor, it was never an order.

was no order.

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16:14:31

Now, my issue with TDCJ and UTMB is, it appears to me by looking at the records that sometime previously a doctor has said that he needs this low-residue diet but that somehow or another that didn't get translated into an order that TDCJ put into place, Mr. Garcia. So, where's the gap missing between the doctor said, yes, he needs a low-residue diet and TDCJ actually having something -- some order or mandate from the medical team of what has to happen for him? MR. GARCIA: For UT -- excuse me. For TDCJ to feed Mr. Connors a low residue diet, simply somebody from UTMB, the dietician or the person who sets up his food, would order a TDCJ person at the Estelle Unit to give him a low-residue diet consisting of and then they would give him that THE COURT: And that seems like that had already MR. GARCIA: But TDCJ's people, the food service people, get the diet from the UTMB dietician. We have not received that order yet. What we have received is just the normal dialysis diet for Mr. Connors. THE COURT: Right. Where's the order from UTMB for

It was a recommendation by the gastroenterology

specialist.

THE COURT: So why didn't the recommendation get turned into an order?

MS. WARREN: Your Honor, there is no low-residue diet that they prescribe. They prescribed him -- there's no term "low-residue diet." The dialysis diet, as Ms. Kim outlined in her affidavit, is a low-residue diet --

THE COURT: Stop. I'm not buying that. You can just forget about that part.

MS. WARREN: Yes, Your Honor.

THE COURT: You can forget about that. When the doctor said he needed a low-residue diet, why was there not an order done, sent to the Estelle Unit saying, This is what he needs in the way of a low-residue diet? Don't tell me that some nurse said, Oh, yeah, this is good enough. The dialysis diet is good enough. Because this nonsense that you put in this affidavit, that the doctor signed something, that the nurse signed, then the nurse got from somebody from TDCJ, who maybe said that this is the same thing, that's just some crap. I'm not buying it, what you -- if that's what you're selling, I'm not buying it.

So when the doctor from UTMB wanted him to have a low-residue diet, what does the doctor next need to do in order to make sure that the doctor's desires or mandate or order is carried out by TDCJ? What is the next step that has to happen?

16:14:40

16:14:34

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MS. WARREN: Your Honor, we have a dietician from UTMB 1 16:15:46 here who can testify as to those issues. 2 3 THE COURT: Okay. Bring the dietician up then. But I don't need them to describe the diet to me. 4 5 I need them to describe the actual protocol in terms of how it 16:15:56 gets from the doctor's order to TDCJ. The dietician tells me 6 7 what the protocol is between UTMB and TDCJ? 8 MS. WARREN: Your Honor, the dietician would be involved in creating the diet. 9 THE COURT: That's not my question. I have a 16:16:16 10 completely different question. Who takes the doctor's orders 11 12 and changes them into an order that TDCJ has to implement? Where's the missing step in terms of how that happens? 13 MS. WARREN: Your Honor, I'm not sure. 14 16:16:31 15 THE COURT: That's what's missing here. The doctor 16 has said one thing. TDCJ says, We'll do it if the doctor writes it down and tells us how to do it. How does that 17 18 happen? What's that process for a doctor's orders to get written down and transmitted to TDCJ, so that they can do their 19 They can't do it unless they get something in writing, 20 16:16:49 21 I'm assuming, right? 22 MR. GARCIA: That's correct, Your Honor. 23 THE COURT: They can't do it unless they get something 24 in writing from UTMB. What is it that they would be getting in 25 writting from UTMB that would allow them to act? 16:17:00

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It would be an order that he receive a
          1
                      MS. WARREN:
16:17:04
             specialty diet.
          2
                      THE COURT: And what -- who would sign that order?
          3
             Would that come from the doctor?
          4
          5
                      MS. WARREN:
                                   It would be from either --
16:17:11
          6
                      MR. GARCIA:
                                   If I may, Your Honor?
          7
                      THE COURT:
                                  Sure, Mr. Garcia.
          8
                      MR. GARCIA: From my experience, at times it comes
             either from the UTMB provider at Hospital Galveston, a
          9
             specialist will make a recommendation or a prescription to the
         10
16:17:21
             provider on the unit. The provider on the unit will then take
         11
             what they have on the unit. Usually I see this in
         12
             prescriptions.
         13
         14
                      THE COURT: Okay.
                      MR. GARCIA: But UTMB guy, Well, I want them to have
16:17:31
         15
                    The person at the local unit will look at it, what they
         16
         17
             have on the TDCJ formulary and then they may prescribe a
             substitution. And it's my understanding --
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         19
                      THE COURT: That's drugs. That doesn't like --
                      MR. GARCIA: But I have a feeling with a prescription
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16:17:46
             diet, which is something treated very similarly, I have a
         21
             feeling that is exactly the same process that goes on.
         22
         23
                      THE COURT: So what UTMB would give you would be
         24
             some -- maybe even a little prescription slip of some sort,
             like we would get, like, for drugs and it would say, This is
         25
16:17:59
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what this person needs to have?
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16:18:03
          2
                      MR. GARCIA:
                                   That is my understanding.
                      THE COURT: Did that ever happen in this case?
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                      MS. WARREN: Not for a low-residue diet, no.
          4
          5
                      MR. FRIEDMAN: Your Honor --
16:18:10
          6
                      THE COURT: But that was -- stop, stop, stop, stop.
                    But wasn't that what the doctor recommended?
          7
             Stop.
          8
                      MS. WARREN: Yes, in -- yes.
                      THE COURT: Right. And so then why did that
          9
             prescription never get written on a piece of paper and given to
         10
16:18:19
             UTM -- to TDCJ so that they can actually do what needed to be
         11
             done?
         12
                                   It's my understanding that there is no
         13
                      MS. WARREN:
             low-residue diet. That there is no diet defined --
         14
                                  Stop. You're not answering my question.
16:18:35
         15
                      THE COURT:
         16
             Why did that never get written down on a piece of paper and
         17
             given to TDCJ?
         18
                      MS. WARREN: Your Honor, I can't answer that question.
             I apologize.
         19
                      THE COURT: Why is it that -- and I understand it's
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16:18:46
             hard to get into specialist appointments, because I've been
         21
             trying to get a specialist appointment for myself. It takes --
         22
             it took me two months to get the appointment that I had this
         23
         24
             morning. But is there any possibility that he can get in to
             see the gastroenterologist before the end of October?
         25
16:19:00
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August.
                      That's two more months away.
          1
16:19:04
          2
                      MS. WARREN: Yes, it will happen before the end of
             October.
          3
                      THE COURT: Okay. Do you know when, by any chance?
          4
          5
                      MS. WARREN:
                                   No, Your Honor, I don't know when in
16:19:11
          6
             October that's supposed to be scheduled.
          7
                                  I'm saying can it be before that, is what
                      THE COURT:
             I'm asking?
          8
                                   Yeah, we can do an emergency appointment,
          9
                      MS. WARREN:
         10
             yes.
16:19:17
                      THE COURT: Okay. Well, can we get that figured out?
         11
                                   Yes, Your Honor.
         12
                      MS. WARREN:
                                  So he can get an appointment and figure
         13
                      THE COURT:
             out what he needs. And then we can get him -- if the doctor
         14
16:19:26
         15
             still believes he needs a low-residue diet, can they write it
             down so that TDCJ can be enabled to fulfill the doctor's
         16
         17
             requests and the doctor's orders?
         18
                      MS. WARREN: Yes, Your Honor.
                      THE COURT: Because there's something -- the missing
         19
             piece is, nobody's given the piece of paper from UTMB to TDCJ.
         20
16:19:41
             What's with that? It's like a big gap, a big hole, where just
         21
             something needs to happen and just nobody is doing anything
         22
                        The man has got puss coming out of his ass.
         23
             about it.
         24
             the hell.
                        This is ridiculous. I mean, people aren't supposed
             to have to live like that.
         25
16:20:02
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MR. GARCIA: Your Honor, we may disagree with what has 1 16:20:04 been put in the affidavit. We will get him the specialty 2 3 referral as quickly as possible. THE COURT: I don't know what you mean with "disagree 4 5 with what's been put in the affidavit." 16:20:12 6 MR. GARCIA: I disagree with how they have put Mr. Connors' condition before the Court. We have had people 7 8 look at him the last couple of days, last week, several days, and the physical -- he doesn't match up to what they're portraying. 10 16:20:24 THE COURT: Well, what do you think? So, you tell me 11 what's happening to him then. 12 MR. GARCIA: Your Honor, I would go with Mr. Chan's 13 affidavit that was filed with the Court, in terms of his 14 16:20:33 15 physical examination of the gentleman. In addition --THE COURT: What did he say? 16 17 MR. GARCIA: He said that there was no puss leaking, that they did find no leakage. However, because of 18 Mr. Connors' complaints, he went ahead and moved forward and 19 made the appointment expedited based on that. 20 16:20:43 THE COURT: Uh-huh. 21 MR. GARCIA: So, we have -- I think we have a 22 difference of what we feel is going on. But I understand the 23 24 Court's concern, and we will get the referral done as quickly as possible. And we will find what the miscommunication is. 16:20:53

If the low-residue diet is ordered again and TDCJ is ordered to 1 16:20:56 provide it by a dietician, we'll get it done. 2 3 THE COURT: Okay. Let's get it done. I mean, this just doesn't make any sense. It's just -- it's literally just 4 5 like a piece of paper is missing. He's getting seen on the one 16:21:10 side, but then somehow or another what the doctor wants is not 6 7 getting translated or what the doctor recommends, I guess, I should say, is not getting translated so that TDCJ can take 8 action on it. MR. GARCIA: And as I said earlier, Your Honor, the 10 16:21:27 only thing I can think of is we're in the situation of what 11 UTMB Galveston recommends is not what the provider on the unit 12 feels is the appropriate --13 THE COURT: So they get to just change what they want 14 16:21:38 15 to change? When a doctor gives some orders, they get to just change whatever they want to? 16 17 MR. GARCIA: The doctor on the unit, it is my 18 understanding that they can --19 THE COURT: Oh, you're saying the doctor on the unit? 20 MR. GARCIA: Yes, Your Honor. Not TDCJ. 16:21:47 21 THE COURT: Okay. MR. GARCIA: So, I was speaking for UTMB. 22 MS. WARREN: It would be -- it would go from Hospital 23 24 Galveston to the Estelle Unit --THE COURT: Okay. 16:21:53

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MS. WARREN: -- that --
16:21:53
          1
          2
                      THE COURT: You're saying another doctor in TDCJ
             might --
          3
                      MS. WARREN: Yes.
          4
          5
                      THE COURT: -- change their mind?
16:21:56
          6
                      MR. GARCIA: Yes, Your Honor. The doctor for UTMB
             would look at the orders that came back from UTMB Galveston --
          7
          8
                      THE COURT: Uh-huh.
                      MR. GARCIA: -- and then adjust those orders to
          9
             whatever the unit has on hand.
         10
16:22:05
         11
                      THE COURT: Okay.
         12
                      MS. WARREN: And that would be at the regional medical
             facility there at Estelle.
         13
         14
                      THE COURT: Okay.
16:22:11
         15
                      MR. GARCIA: Yes, Your Honor.
                      THE COURT: But right now you've got no order written
         16
         17
             down saying this is what he has to have?
                      MR. GARCIA: We have an order for a dialysis diet,
         18
             Your Honor --
         19
                      THE COURT: All right.
         20
16:22:18
         21
                      MR. GARCIA: -- right now.
                      THE COURT: Okay. So how about this: Why don't you
         22
             guys let me know when UTMB -- let me know when you can get him
         23
         24
             an appointment.
                      MS. WARREN: Yes, Your Honor.
16:22:28
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16:23:45

THE COURT: Just call Byron back and let me know what is going to happen and then I'm going to set you guys to come back here to see me again after the date of whatever that appointment is.

MS. WARREN: Yes, Your Honor.

THE COURT: But I'm hoping that the appointment is going to be within the next 30 days, not two months away. I know it's hard to get in to see those specialists for everybody, with all kinds of ailments, especially all us old people. Anyway, but as soon as you find out what the date is going to be for his gastro appointment, call Byron. But we're going to reset this for after that date.

MS. WARREN: Yes, Your Honor.

THE COURT: And then hopefully at that point in time, once he sees that specialist, the doctor will write down what it is that he wants to have happen and send it over to TDCJ medical staff, so that they know what it is that needs to happen. But I want to see -- that's why I want to see you guys after the appointment, to make sure that that process has not fallen in the hole again, where the doctor at UTMB makes a particular recommendation -- and he may or may not -- he or she may not say low-residue diet. If they say that's not what's needed, then that's the end of the discussion and we're finished with the whole talk.

But if the doctor makes a specific recommendation

and -- I just want to make sure that somehow or another that 1 16:23:47 recommendation gets transmitted to TDCJ, so that you can carry 2 3 out and fulfill whatever the recommendation is from the doctor. But if, you know, if the doctor says, No, he's fine, he doesn't 4 need it, well, then there's nothing else for us to talk about. 16:24:01 5 6 But right now, I mean, I can't prescribe or say that he needs 7 to get something in particular, because I don't know. I'm not a doctor and neither are you. 8 MR. FRIEDMAN: I'm just asking that -- there's a long 9 history of him getting a -- you know, him being recommended 10 16:24:13 11 this diet. We've got a paper --THE COURT: Okay. And I saw that. And that's why I 12 was hoping that he'd get to see a gastroenterologist sooner 13 than --14 16:24:22 15 MR. FRIEDMAN: Thank you. 16 THE COURT: -- a couple months from now. I mean, I 17 understand it takes a long time to get in to see a specialist and all of that but --18 It's a long history. 19 MR. FRIEDMAN: THE COURT: Huh? 20 16:24:28 21 MR. FRIEDMAN: It's a long history. 22 THE COURT: Right. So somehow or another the misconnect or the disconnect here is it's never getting 23 24 transmitted from UTMB to TDCJ. We need to make sure that we figure out where the gap is in that process. 25 16:24:40

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So I'm just going to leave this pending.
          1
16:24:42
          2
             see you guys after his doctor's appointment, which hopefully
             will be within the next 30 days.
          3
                                       Thank you, Your Honor.
          4
                       MR. FRIEDMAN:
          5
                       THE COURT: Okay.
                                           Thank you guys.
16:24:50
                       MS. WARREN: And we'll inform the Court of that date.
          6
          7
                       THE COURT: Thank you.
          8
                  (Concluded at 4:24 p.m.)
          9
             I certify that the foregoing is a correct transcript from the
         10
             record of proceedings in the above-entitled cause, to the best
         11
             of my ability.
         12
         13
                                                             12–18–2021
             /s/ Kathy L. Metzger
         14
             Kathy L. Metzger
         15
             Official Court Reporter
         16
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Case 4:17-cv-01512 Docu	ment 213 Filed on 12/18/21 in appointments [1] 13/21	TXSD Page 21 of 23 DEFENDANTS [1] 1/15
	appropriate [1] 16/13	defendants' [1] 5/5
MR. FRIEDMAN: [32]	Approximately [1] 4/9	defined [1] 13/14
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